EDITOR'S NOTE

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87-1698

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

*

SHEREEN RAMONA ZIPFEL, *et al.*,
Petitioners,

versus

CROWLEY MARITIME CORPORATION, *et al.*,
Respondents.

*

APPENDIX OF EXHIBITS
FOR
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

*

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APPENDIX A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CORA E. SHERRILL, etc., Plaintiff, v. BRINKERHOFF MARITIME DRILLING CORPORATION, et al., Defendants.	NO C-82-0836 RPA And Related Actions: C-82-1866 RPA C-82-2565 RPA C-82-2566 RPA C-82-2568 RPA C-82-2569 RPA C-83-0603 RPA C-83-0604 RPA C-83-0605 RPA C-83-0606 RPA C-83-0607 RPA C-83-1022 RPA C-83-4025 RPA

OPINION AND ORDER

Plaintiffs have asserted jurisdiction pursuant to the Jones Act (46 U.S.C. Sec. 688), and general maritime law. The Court has before it the following matters:

1. Defendants' Hudbay Oil (Malacca Strait) Ltd. ("HOMSL") and Hudson Bay Oil & Gas Co., Ltd. ("HBOG") motions to

dismiss based on lack of in personam jurisdiction and on the grounds of forum non conveniens.

2. Defendants' McClelland Engineers, Inc., Oceaneering International, Inc., and Halliburton Company joint motion to dismiss on the grounds of forum non conveniens.

3. Defendants' Crowley Maritime Corporation, Brinkergoff Maritime Drilling Corporation, S.A., and Brinkerhoff Maritime Drilling Cororation PTE, Ltd. motion for summary judgment to dismiss on the grounds of forum non conveniens, which motion has been joined by defendant Conoco, Inc.

4. Defendant Atlantic Richfield Corporation's motions to dismiss on the grounds of res judicata against plaintiffs David Alfred Lowry (No.C-82-2566 RPA) and Murray Robert Cole (No. C-82-2569 RPA), which actions were previously filed and dismissed from the

United States Districts Court, in and for the Central District of California, and to dismiss based on grounds of forum non conveniens.

The Court has recieved, read and considered all of the matters, and the oppositions thereto, and has heard oral argument and also has reviewed pertinent additional documents presented by the parties, and good cause appearing therefor, now renders the following Opinion and Order.

FACTS

Plaintiffs and their decedents have filed actions for personal injuries or wrongful death arising out of an airplane crash which occurred on April 28, 1981. The Indonesian aircraft, owned P.T. Airfast Services, Indonesia, which had been chartered by HOMSL, crashed while approaching for a landing at Simpang Tiga Airport, Pekanbaru, North Sumatra, Indonesia, en route from Singapore.

Plaintiffs include American nationals and their decedents, together with foreign nationals from diverse countries, including Singapore, Australia, United Kingdom, Canada, and New Zealand. All were employed by one or more of the various defendants, and were on thier way, at the time of the accidents, to work aboard the oil drilling rig vessel, Brinkerhoff I, which was anchored in Indonesian waters. The Brinkerhoff I was at the time in question an American flag-flying vessel, registered in San Francisco, Califoria, and owned by by Brinkerhoff Maritime Drilling Corporation, a Delaware corporation, with its home office in San Francisco, Calfornia.

The crews of the Brinkerhoff I lived on board the vessel, and rotated their time on and time off in two-week increments. Plaintiffs maintained a home base in Singapore and were shuttled between Singapore and the location of the vessel

by transportation provided by their employers.

Defendants' HOMSL and HBOG MOTION TO DISMISS BASED ON LACK OF IN PERSONAM JURISDICTION

In connection with this motion, the court finds that the plaintiffs have not met thier burden of showing the following:

1) That HOMSL or HBOG, Canadian corporations, conducted continuous and systematic business activity in this forum;

2) That the causes of action in these cases do arise out of, or result from, any activity of HOMSL or HBOG connected with this forum;

3) That CONOCO, Inc., an American corporation, is the "alter ego" or agent of whether HOMSL or HBOG.

4) That HOMSL or HBOG have the necessary minimum contracts with this forum to allow this Court to exercise personal jurisdiction over them.

Accordingly, and for good cause appearing, IT IS HEREBY ORDERED that defendants' HOMSL and HBOG motion to be dismissed from these actions for lack of personal jurisdiction pursuant to Rule 12(b) of the Federal Rules of Civil Procedure is granted.

DEFENDANT ATLANTIC RICH FIELD CORPORATION'S MOTION TO DISMISS BASED ON RES JUDICATA

The Court finds that plaintiffs did not have a full and complete opportunity to contest the issue in the Central District of California, and even though any failure to contest was predicated upon plaintiffs' not filing timely opposition, the Court denies defendant's motion to dismiss. Because of the default nature of the proceedings, the Court feels that dismissal is inappropriate and that plaintiffs should have an opportunity to be heard fully.

Accordingly, and for good cause appearing, IT IS HEREBY ORDERED that defendant Atlantic Richfield Corporation's motion to dismiss vased on **res judicata** is denied.

DEFENDANTS' MOTIONS TO DISMISS BASED ON FORUM NON CONVENIEN

The issue before the Court is whether this Court should retain these cases and try them under the Jones Act, or whether plaintiffs should be remitted to appropriate proceedings elsewhere.

The threshold question to be ascertained before a district court dismisses a case based on the doctrine of **forum non conveniens** is whether American law or foreign law governs the plaintiffs' claims. Given the facts of these particular cases, the Court finds that American law, and hence the Jones Act, governs the plaintiffs' claims.

The proper method of approaching the

choice of law question has been described as follows, after an appraisal of the cases from **Lauritzen v. Larsen**, 345 U.S. 571 73 S. Ct. 921, 97 L.Ed. 1254 (1953) and forward. "Taken together these cases hold that a court reviewing a claim to Jones Act coverage should determine the substantiality of links to the United States and the links to the foreign sovereignty. This process is undertaken to discern in whose "domain" the paramount interest lies. **Lauritzen**, 345 U.S. at 582, 73 S.Ct. at 921." **Chirinos de Alarez v. Creloe Petroleum Corp.**, 613 F.2d 1240, 1246 (3d.Cir. 1980)

If the district court determines that American law aplies, then it should normal retain jurisdiction and proceed with the case. If, however,foreign law applies and the foreign forum is accessible, then the district court should determine in which forum the case should be tried, and if it

decides that the lawsuit should be tried in the foreign forum the case should be tried in the foreign forum, then the court should decline to exercise jurisdiction. **Fisher V. Agious Nicolaos V.** 628 F.2d 308,315 (5th Cir. 1980),**cert. denied, sub nom, Valmas Brother Shipping, S.A. v. Fisher,** 454 U.S. 816 (1981). **Bailey v. Dolphin Intern., Inc.,** 697 F.2d1268 (5th Cir. 1983). **Bailey v. Dolphin Intern., Inc.,** 697 f.2d 1268 (5th Cir. 1983).

Lauritzen, supra,is the leading case on the multi-factor test for determining what law should apply to an accident containing both foreign and domestic elements. The Supreme Court therein listed seven factors which should be considered in determining whether the Jones Acts applies:

1. The place of the wrongful act.
2. The law of the flag.

3. The allegiance or domicile of the injured party.

4. The allegiance of the defendant shipowner.

5. The place where the contract of plaintiff's employment was made.

6. Inaccessibility of the foreign forum.

7. The law of the forum.

An eighth factor, the vessel owner's base of operations, was added by the Supreme court's decision in **Hellenic lines V. rhoditis,** 398 U.S. 306, 309, **reh. denied,** 400 U.S. 856 (1970).

The Court notes that in reaching its conclusion, it was bound to keep in mind the liberal purposes of the Jones Act. **Vaz Borralho v. Keydril Co.,** 696 F.2d 379, 389 (5th Cir. 1983).

No case has been found, or cited to this Court, which speifically considers the combination of factors present here.

In the instant actions, American plaintiffs or decedents, employed by an American corporation, Brinkerhoff Maritime Drilling Corporation, were injured en route to their employment aboard the vessel Brinkerhoff I, registered in the United States, flying an American flag, and with its home port in San Francisco, Califoria. There is ample authority denying Jones Act application where the actions involve all foreign nationals, and the events took place in that foreign country.

The following contacts are substantial and favor the application of American law, and hence the Jones Act, to these actions. he law of the flag is American, the allegiance or domicile of the injured parties is American in the case of American nationals, the defendant shipowner's allegiance is American, and the law of the forum is American.

The Ninth Ciruit has recently spoken on choice of law in **Phillips v. Amoco Trinidad Oil Co.**, 632 F.2d 82 (9th Cir.1980) **cert. denied**, 451 U.S. 920 (1981). There, on facts distinguishable from those of these matters, the Court of Appeals upheld a district court determination that the law of Trinidad, rather than United States maritime law (the Jones Act) applied to two wrongful death actions and twelve personal injury actions filed on behalf of citizens and domiciliaries of Trinidad. The Court set forth some guidance for application of the choice-of-law factors enumerated in **Lauritzen.**

> Factors unambiguously pointing toward the application of American law, and hence the Jones Act, include the law of the flag, the allegiance of the defendant shipowener, and the law of the forum. **Id.** at 86-7.

Certainly those factors are present here. The Court in Phillips determined that because of the facts of that case, the law of the flag should not be accorded controlling weight. The vessel flew a United States flag, but there were no American nationals in Phillips. All workers were Trinidad nationals, injured offshore of Trinidad, and thus, said the court, there was no element of fortuity as to the place of the wrongful act. All workers had contracts of employment executed in Trinidad. In the case at bench, the place where the contract of employment was is of somewhat reduced significance. Most employees did not have in their contracts which called for their service anywhere in the Far East.

Although the Brinkerhoff I appears to have been a stationary vessel rather than one that travelled the international seas, this Court finds that the law of the flag

is one substantial factor in the present actions. No one factor is given controlling weight.

The most overwhelming feature of these actions which causes this Court to apply American law is the presence of the American citizens, and especiallly given the liberal purposes of the Jones act. In Phillips, the Court implicitly acknowledges that had that action involved American nationals, the Jones Act would have applied. The Court stated:

> The plaintiffs also urge that it would be unfair to deny the benefits of American law to these Trinidad nationals and that the Jones Act would apply if these workers were American citizens. (citation omitted) But the allegiance of the injured seamen has always been viewed as a relevant and important consideration in determining the appropriate law to apply. We know of no authority for the view that foreign nationals may predicate a right to have American law applied on the right to have American law applied on the rights of similarly situated American law applied on the rights of similarly situated American citizens. (emphasis added). Id. at 88.

While not all plaintiffs are American citizens, the plaintiffs have pointed out that most of the remaining plaintiffs are English-speaking,and only two are Singaporean citizens.

Defendants have argued that the relevant base of operations of the Brinkergoff I was in Indonesia, and for that reason, foreign law should aply. While American ownership and control alone are insufficient to warrant the application of American law to offshore drilling platforms at long term fixed locations, **Vaz Borralgo v. Keydril Co.**, 696 F.2d 379 (5th Cir. 1983), the Court reiterates that no one factor controls. There are substantial contacts which mandate the application of American law, and therefore the Court does not reach the issue of the locus of the relevant base of operations at this time.

In The Law of Seamen, 2 Norris 3d.Ed. 1970, the writer states, at Sec. 683:

> There can be no question but that an American seamen injured on an American vessel in the course of his employment and due to the negligence of his employer may maintain an action at his action in American courts has been tacitly accepted although the injury takes place in a foreign ort and in the territorial waters of another nation.

> And, at Sec. 684, the writer continues: The Jones Act makes no distinction between alien seamen and American seamen when injured whil aboard an American flag vessel. The Act speaks of injury to "any seaman."

The Court recognizes, of course, that the place of the wrongful act in this case was in Indonesia. However, the choice-of-law test is not a mechanical one and the factors are not necessarily accorded equal weight, as previously mentioned. **Phillips v. Amoco Trinidad Oil Co.**, 632 F.2d 82, 85 (9th Cir. 1980).

The contacts with the United States which are present are substantial. This Court finds that the presence of the

American nationals, together with the other factors set forth above, creates substantial links to the United jStates in comparison with the foreign nations involved, and therefore this Court applies American law to all actions, and retains jurisdiction. The Court does no more at this time than decide the choice-of-law question.

Accordingly, and for good cause appearing, IT IS HEREBY ORDERED that defendants' motions to dismiss on the grounds of **forum non conveniens**, and for summary judgment on the grounds of **fourm non conveniens**, are denied.

In summary, the court makes the following orders:

1. Defendants' HOMSL and HBOG motions to be dismissed from these actions for lack of personal jurisdiction are granted.

2. Defendant Atlantic Richfield Corporation's motion to dismiss based on

res judicata is denied.

3. Defendants' motions to dismiss based on forum non conveniens are denied.

IT IS SO ORDERED.

DATED: October ___, 1983.

Robert P. Aguilar
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CORA E. SHERRILL, etc., Plaintiff, v. BRINKERHOFF MARITIME DRILLING CORPORATION, et al., Defendants.	NO C-82-0836 RPA And Related Actions: C-82-1866 RPA C-82-2565 RPA C-82-2566 RPA C-82-2568 RPA C-82-2569 RPA C-83-0603 RPA C-83-0604 RPA C-83-0605 RPA C-83-0606 RPA C-83-0607 RPA C-83-1022 RPA C-83-4025 RPA

O R D E R

This matter came on for regularly scheduled hearing on December 8, 1983, on the following motions: Joint Motion of Defendants Halliburton Co., McClelland Engineers, Inc. and Oceaneering International, Inc. (hereafter "the 3 joint defendants") for Reconsideration of

Defendants Joint Motion for Summary Judgments, or Alternatively for Certification for Interlocutory Appeal; and Defendants Crowley Maritime Corporation and Brinkerhoff Maritime Drilling Corporation's Motion for Reconsideration, or in the Alternative to Amend Order to Provide for Certification Pursuant to 28 U.S.C. Section 1292(b). The 3 joint defendants also join the latter motion.

The Court having received, read, and considered the moving papers and opposition thereto, and having heard oral argument on the matter, now renders its decision as follows.

The 3 joint defendants, Halliburton Co., McClelland Engineers Inc., and Oceaneering International, Inc. previously submitted for this Court's review a motion which was treated as a motion for summary judgment. The Court denied that motion. The Court now denies the 3 joint

defendants' motion for reconsideration and affirms its previous decision.

It appears undisputed by the parties, and seems clear on its face, that plaintiffs Zipfel, Chee, and Albuquerque were employed by the foreign subsidiaries of the 3 joint defendants. Those defendants are the parent companies of the foreign subsidiaries. The undisputed fact of employment as set forth, however, does not end the inquiry in this factual context. Questions remain as to which party, if any, is ultimately responsible should liability by determined. The Court is not convinced at this early stage of the proceedings that the 3 joint defendants could now be found to be defoid of responsibility. However, should that result occur, it is the Court's view that it ought to come after further discovery has been undertaken in this lawsuit.

In a motion for summary judgment, the court must resolve all factual disputes against the moving party. **Chirinos de Alvarez v. Creole Petroleum Corp.**, 613 F.2d 1240 (3d Cir. 1980).

Moreover, in Jones Act cases, summary judgment is rarel appropriate. **Lies v. Farrell Lines, Inc.**, 641 F.2d 765 (th Cir. 1981). Summary judgment is not the appropriate procedure for disposing of cases "where there is any initial doubt whether a material issue of fact exists.: Id. at 772.

For the foregoing reasons, the Court denies the motion for reconsideration made by the 3 joint defendants Halliburto Co., McClellantd Engineers, Inc., and Oceaneering International Inc..

The Court now turns to the other motion for reconsideration made by defendants Crowley Maritime Corporation and Brinkerhoff Maritime Drilling Corporation.

For the reason set forth in the Court's Opinion and Order dated October 11, 1983, and for the reasons set forth below, the Court denies these defendants' motion for reconsideration.

These defendants take issue in particular with the Court's prior failure to reach the issue of the relevant base of operations. The inquiry concerning the applicability of the Jones Act\choice of law consists of aplication of the criteria set out by the United States Supreme Court in **Lauritzen v. Larsen**, 345 U.S. 571, 583-89 (1953), and one additional factor **Rhoditis**, 398U.S. 306, 309, **reh. denied**, 400 U.S. 856 (1970). While base of operations is one factor to be considered, it is not the controlling factor in determining choice-of-law. **De oliveira v. Delta Marine Drilling Co.**, 707 F. 2d 843 (5th Cir. 1983)

The Court considered all factors in the choice-of-law determination when it heard the original motions in this matter. The Court did not specifically disignate the locale of the relevant base of operations in its Opinion and Order dated October 11, 1983, because it seemed clear to the Court that regardless of whether the location was, the present contacts to the United States were substantial. Once the substantiality of those present contacts had been established, it appeared obvious that the aplication of United States law was appropriate. To state it another way, even if one were to assume a foreign base of day-to-day operations of the relevant business venture, the contact to the United States are substantial and warrant the application of United States law. As the Court stated in **Phillips v. Amoco Trinidad Oil Co.**, 632 F.2d 82, 85 (9th Cir. 1980), "(T)he choice-of-law test is

not a mechanical one and . . . the factors are not necessarily accorded equal weight."

The Court reiterates the distinction from **Phillips** noted in its opinion and Order. In that case, all of the plaintiffs were Trinidadian domiciliaries or citizens, and the facts were otherwise overwhelmingly connected to Trinidad. The instant cases present an entirely different situation. More than one country is involved. The plaintiffs in these related actions cover a variety of nationalities, including Americans. In **Phillips** noted in its Opinion and Order. In that case, all of the plaintiffs were Trinidadian domiciliaries or citizens, and the facts were other wise overhelmingly connected to Trinidad. The instant cases present an entirely different situation. More than one country is involved. The plaintiffs in these related actions cover

a variety of nationalities, including americans. In Phillips the Court stated:

> There is little doubt that sufficient American interest in a particular transaction can rest on the presence of one or more important contacts between that transaction and this country .... Substantiality is a relative term, and *Lautizen* requires that we compare the substantiality of our interest in a given transaction with that of other nations .... Although the Jones Act may be far-reaching under certain circumstances, there is also no doubt that "when the links to the United States are weak and the interests of another sovereign are substantial, the Jones Act is not applicable." (citation). This is a comparative, and not an absolute, evaluation.

Id. at 86.

As indicated in the Court's Opinion and Order dated October 11, 1983, there are important contacts to the United States in these actions. Of course, because of the nature and location of the accident, both Singapore and Indonesia have an interest in these matters. On a comparative basis, however, the interests of the United States are greater here and more

substantial than those of any other country. The links to the United States are clearly not weak in this context. It was, and continues to be, the court's opinion that the contacts with the United States are substantial, and thus the Court affirms its previous decision, and denies defendants' motion for reconsideration.

Remaining for decision are the questions of certification for appeal, and if certified, stay of distrit court proceedings pending apeal.

All defendants have requested that this Court amend its previous Order to provide for certification for appeal for if the Court declines to reconsider its rulings. 28 U.S.C. Section 1292(b) states:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling quesion of law as to which there is substanial ground for difference of opinion and that an

> immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

The Court finds tht its Opinion and Orders dated October 11, 1983, and October 19, 1983, are appropriate for certification for appeal.

The Court finds that the Orders involve (1) a controlling question of law (2) as to which there is substantial ground for difference ground for difference of opinion and (3) that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

Therefore, the Court certifies the following question to the court of Appeals for the Ninth Circuit:

What law, United States law (i.e., the Jones Act), or foreign law, applies to this matter?

Good cause appearing therefore, IT IS

HEREBY ORDERED that all further District Court proceedings herein are stayed until the Court of Appeals has acted on the certification.

IT IS SO ORDERED.

DATED: January ___, 1984

ROBERT P. AGUILAR
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHEREEN RAMONA ZIPFEL, Plaintiff-Respondent, -vs- HALLIBURTON COMPANY, et al., Defendants-Petitioners.	)	No. 84-8016 DC# CV-83-0603 RPA Northern Calif.
CORA E. SHERRILL, etc., Plaintiffs-Respondents, -vs- BRINKERHOFF MARITIME DRILLING CORP., et al., Defendants-Petitioners.	)	O R D E R No. 84-8017 DC# CV-82-0836 Northern Calif.

Before: WALLACE, ANDERSON and TANG, Circuit Judges

The interlocutory review of a choice of law decision made early in the proceedings of a multiple citizenship mass tort suit can often increase judicial efficiency. In

these cases, however, we don not have an adequate record for review. We note, for example, the lack of a finding on the question of the shipowner's base of operations, and the lack of clear evidence on the places where the contracts of employment may have been made. **See generally Hellenic Lines v. Rhoditis**, 398 U.S. 306, 308-09 (1970). If the district court and the parties create a better record for review before the proceedings have continued so far as to discourage interlocutory action, we see no reason why the defendants may not request a certification for interlocutory appeal from the district court again.

The present petitions for appeal under 28 U.S.C. Section 1292(b) are, however, denied.

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHEREEN RAMONA ZIPPEL, Plaintiff-Respondent, -vs- HALLIBURTON COMPANY, et al., Defendants-Petitioners.	)	No. 84-8016 DC# CV-83-0603 RPA Northern Calif.
CORA E. SHERRILL, etc., Plaintiffs-Respondents, -vs- BRINKERHOFF MARITIME DRILLING CORP., et al., Defendants-Petitioners.	)	O R D E R No. 84-8017 DC# CV-82-0836 Northern Calif.

Before: WALLACE, ANDERSON, and TANG, Circuit Judges

Petitioners' motion for reconsideration is denied. We, as an appellate court, decline to make factual findings in this case.

APPENDIX E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CORA E. SHERRILL, etc.,	)	
	)	
Plaintiff,	)	
	)	NO C-82-0836 RPA
v.	)	
	)	And Related
	)	Actions:
BRINKERHOFF MARITIME	)	
DRILLING CORPORATION,	)	C-82-1866 RPA
et al.,	)	C-82-2565 RPA
	)	C-82-2566 RPA
Defendants.	)	C-82-2568 RPA
	)	C-82-2569 RPA
		C-83-0603 RPA
		C-83-0604 RPA
		C-83-0605 RPA
		C-83-0606 RPA
		C-83-0607 RPA
		C-83-1022 RPA
		C-83-4025 RPA

O R D E R

This matter came on for hearing on defendants' Motion for Issuance of Formal Findings of Fact and Clarification of Stay Order. The Court has received and considered the documents filed by the parties, has heard oral argument, and has

considered all supplemental papers submitted.

The Court grants defendants' motion, so this matter may be heard on appeal by the Ninth Circuit Court of Appeals, and issues the following findings in connection with the choice of law question. In doing so, the Court follows the suggestion in the Ninth Circuit Court of Appeals' Order of June 20, 1984 to make (a) a definitive finding as to the shipowner's base of operations and (b) a finding regarding the place where contracts of employment were entered into.

In making these findings, the Court has construed the papers in the light most favorable to the plaintiffs, the non-moving parties, both here and in the underlying motions. The Court believes that it would be the most expedient course if the Court of Appeals were to decide the choice of law issue before this action proceeds.

The Court sets forth findings as to choice of law pursuant to those stated in the leading case of **Lauritzen v. Larsen**, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254 (1953) and one in a later case, referred to by the Court of Appeals, **Hellenic Lines v. Rhoditis**, 398 U.S. 306, reh. denied, 400 U.S. 856 (1970).

In some instances the Court merely reiterates as formal findings of fact points made in its prior Opinion and Order, which contains more discussion. To that extent, these findings are to be read in conjunction with the Court's previous Opiion and Order dated October 11, 1983.

FINDINGS OF FACT

1. The place of the wrongful act was Indonesia.

2. The law of the flag is the law of the United States.

3. The allegiances or domiciles of the injured parties are as follows. Three

plaintiffs (or plaintiff's decedent), Sherill, Schwartz, and Craig, are American. The remaining seven plaintiffs, Cole Lowry, Jones, Chee, Albuquerque, Zipfel, and Grunke, are foreign, with a variety of countries represented. Most of the foreign plaintiffs are English-speaking citizens or domiciliaries of Canada, Australia, the United Kingdom and New Zealand; only two are citizens of Singapore, and none are Indonesian.

4. The allegiance of the defendant shipowner is the United States.

5. The place where the contracts of plaintiffs' employment were made was previously an unresolved issue. Defense counsel represented to the Court at the hearing that as to those plaintiffs who did enter into formal contracts of employment, they were entered into in foreign locales. The Court has previously implicitly found that any contracts were

entered into in foreign locations, and now formally so finds.

6. Foreign forums in either Singapore or Indonesia are accessible to the plaintiffs.

7. The law of the forum is American.

8. The shipowner's base of operations is a matter which this Court previously declined to fix since it decided that substantial contacts with the United States were already present. The Court assumed a foreign base of operations, **see e.g., Vaz Barralho v. Keydril Co.**, 696 F.2d 379, 383, n. 4 (5th Cir. 1983). Even assuming a foreign base of operations, the Court previously decided that application of American law was nevertheless warranted in these proceedings.

The Court now finds that the relevant base of operations of the vessel Brinkerhoff I was either Singapore or Indonesia, or both. The overall base of

operations of the corporate shipowner defendant, Brinkerhoff Maritime Drilling Corporation, was in San Francisco, California.

All proceedings are stayed pending the Court of Appeals' resolution of defendants' interlocutory appeal.

IT IS SO ORDERED.

DATED: October 22, 1984.

ROBERT F. AGUILAR
United States District Judge

APPENDIX F

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CORA E. SHERRILL, etc.,	)	No. 84-8200
	)	
Plaintiff,	)	DC#
	)	C-82-0836RPA
v.	)	
	)	And Related
	)	Actions:
BRINKERHOFF MARITIME	)	
DRILLING CORPORATION,	)	C-82-1866 RPA
et al.,	)	C-82-2565 RPA
	)	C-82-2566 RPA
Defendants.	)	C-82-2568 RPA
	)	C-82-2569 RPA
		C-83-0603 RPA
		C-83-0604 RPA
		C-83-0605 RPA
		C-83-0606 RPA
		C-83-0607 RPA
		C-83-1022 RPA
		C-83-4025 RPA
		Northern Calif.

O R D E R

Before: ANDERSON and CANBY, Circuit Judges

Defendants' petition for permission to appeal under 28 U.S.C. Section 1292(b) is denied. We are not persuaded that there is substantial ground for difference of

opinion on the choice of law question in all of these actions or that the proffered appeal is likely to advance the ultimate termination of the litigation.

EXCERPTS FROM

DAYWORK DRILLING CONTRACT

BETWEEN

ATLANTIC RICHFIELD INDONESIA, INC.
OPERATOR

AND

BRINKERHOFF MARITIME DRILLING CORP.
CONTRACTOR

DATED: 29 October 1979

CONTRACT REF: 687/OPS/79

FOR THE DRILLING UNIT

BRINKERHOFF I

DAYWORK DRILLING CONTRACT

1.1 DATE, PLACE AND PARTIES: This Contract is made as of the date and in the place as set forth in Schedule A between the party designated as Operator and the party designated as Contractor in Schedule A.

2.1 SCHEDULES: Attached hereto, and by reference incorporated in this Contract, are the following Schedules:

SCHEDULE A: Contract Summary
SCHEDULE B: Contractor's Personnel
SCHEDULE C: Contractor's Equipment
SCHEDULE D: Equipment, Services and Facilities Furnished
SCHEDULE E: Insurance

3.1 CONTRACTOR'S PERSONNEL: Contractor shall furnish, at Contractor's cost, the personnel in the numbers, classifications, and work schedules set forth in Schedule B. (All such personnel are referred to in this Contract as "Contractor's Personnel".)

* * * * *

5.1 BASIC AGREEMENT: Contractor shall furnish and operate Contractor's Equipment

to its full capacity as rated by the manufacturer, and shall furnish Contractor's Personnel for the purpose of drilling one or more wells as programmed by Operator on the terms and conditions set forth in this Contract.

* * * * *

8.1 AREA OF OPERATIONS: The Area of Operations is set forth in Item A-11 of Schedule A. Operator may change said Area of Operations by giving Contractor due notice, and adjusting rates in accordance with Section 19.10 (RATE ADJUSTMENT).

* * * * *

19.10 RATE ADJUSTMENT: Either party may request an adjustment in the day rates payable to reflect an actual change in Contractor's cost or expense of performing under this Contract due to any of the following:

* * * * *

(c) a change in the Area of Operations and/or the shore base location.

* * * * *

20.3 PLACE OF PAYMENT: All payments hereunder shall be made to Contractor's account set forth in Item A-10 of Schedule A.

20.4 CURRENCY: All payments under this Contract shall be in currency of the United States of America; ....

24.5 EMPLOYEES: Each party shall protect, indemnify and save the other party harmless from and against all claims, demands, and causes of actio of every kind and character for injury to or death of each party's own employees and for all damage, loss or destruction of property of each party's own employees regardless of how, when or where such damage, loss or destruction occurs.

24.6 THIRD PARTIES, AND PROPERTY OF THIRD PARTIES: Contractor shall protect, indemnify and safe Operator harmless from and against all claims, demands, and cause of action of every kind and character,

arising out of this Contract, for injury to or death of all persons who are not employees of Operator or Contractor and for damage, loss or destruction of property other than Contractor's Equipment and Operator's Equipment regardless of how, when or where such damage, loss or destruction occurs.

* * * * *

24.12 CLAIMS: All claims against Contractor for labor (including but not limited to social benefits, termination pay or similar benefits), services and other items required or used hereunder by Contractor shall be paid promptly when due and Contractor shall indemnify and hold harmless Operator from and against all liability, demands and expenses from all such claims.

* * * * *

27.1 DISCIPLINE AND SAFETY: Contractor shall, at all times, maintain strict discipline and good order among its

employees and its Subcontractor's employees. Contractor shall adequately instruct all its employees in the use of safety equipment and proper work procedures for the purpose of doing everything reasonably possible to protect against personal injury and damage to equipment and hold. Contractor shall establish safety rules and procedures and require that is employees observe same as well as any that may be issued by Operator and any safety regulations issued by agencies of any government having jurisdiction. Contractor shall take all measures necessary to provide safe working conditions. No smoking or open flame or matches or lighters shall be permitted on the drilling unity except in areas designated by Contractor in consultation with Operator as areas wherein smoking or open flame are permitted. Contractor shall conduct safety drills for all personnel and shall report same on the Daily

Drilling Report. Contractor shall furnish Operator promptly with a report of each accident.

* * * * *

SCHEDULE A

* * * * *

A-35 Governing Law: State of California - U.S.A

* * * * *

SCHEDULE B

CONTRACTOR'S PERSONNEL

1. DRILLING UNIT PERSONNEL:

Contractor shall provide the minimum personnel listed below by job classification to be on the drilling unit at all times.

a. DRILLING CREW:

Classification:

	On Duty	On Location	Relief	Work Schedule
Drilling Superintendent	1	as required		
+/ Rig Superintendent	1	1	1	7x7
+/ Toupusher	1	1	1	7x7
+/ Driller	1	1	2	14x14
Alt Driller	1	1	2	14x14
Barge Captain	1	1	1	14x14
Motorman	1	1	2	14x14

	Mechanical Supv	1	1	1	14x14
*)	Electr. Supervi.	1	1	1	14x14

		Nationality	Total
	Drilling Superintendent	Expatriate	1
*)	Rig Superintendent	Expatriate	2
*)	Toursusher	Expatriate	2
*)	Driller	Expatriate	4
	Alt Driller	Expatriate	4
	Barge Captain	Expatriate	2
	Motorman	Expatriate	4
	Mechnical Supv	Expatriate	2
*)	Electr. Supervi.	Expatriate	2

* * * * *

SCHEDULE D

EQUIPMENT, SERVICES AND FACILITIES FURNISHED

	Category
Furnished by Contractor, paid by Contractor	1
Furnished by Contractor, paid by Operator, plus handling charges as set forth in Item A-26, Schedule A.	2
Furnished by Contractor, paid by Operator, no handling charge	3
Furnished by Operator, paid by Operator	4
Not Applicable	N/A

* * * * *

47. Transportation equipment for Contractor's supplies, equipment and personnel at Singapore.

1

* * * * *

48. Commercial airline transportation originating outside of Indonesia for Contractor's material, Personnel and supplies to Area of Operations.

1

* * * * *

61. Insurance as provided in Schedule E.

1

* * * * *

SCHEDULE E

INSURANCE

* * * * *

E-2 Employer's Liability Insurance with a limit of $1,000,000 per accident.

If the performance of the Contract requiries use of watercraft or is performed over water, this Insurance shall include coverage for liability under the Jones Act and the Geneal Maritime Act, where applicable, and shall further provide that a claim "in rem" shall be treated as a Claim against the employer.

* * * * *

E-12 Subcontractors. Contractor will require that each and every Subcontractor employed by him in connection with this Contract shall carry and pay for insurance in amounts deemed necessary by the Contractor. Any defidiency in the coverages or policy limits of Subcontractors will be the responsibility of the Contractor to the extent of Contractor's obligations under the Contract. ....

E-13 Effect of Contractor's Insurance. Neither the obligation of Contractor to obtain the foregoing insurances nor the incusion of Operator or the parties designated by Operator as additional asureds under Section E-7 hereof shall abrogate the indemnifications, liabilities or obligations between the parties as expressly assumed under this Contract. Furthermore, the coverage provided to the additional assureds under Section E-7 shall not be deemed to include any contractual indemnifications, liabilities or indemnificatons expressly assumed by said additional assureds; this shall be without prejudice to any other legal rights which said additional assureds may be able to assert against Contractor or its underwriters.

APPENDIX H

NAME	NATIONALITY	NOMINAL EMPLOYER
1. CRAIG (deceased)	United States	Brinkerhoff
2. OWEN (deceased)	United States	Brinkerhoff
3. SHERRILL (deceased)	United States	Brinkerhoff
4. KAUFMAN (deceased)	United States	Arco Service Int'l, Inc.
5. ZIPPEL	United Kingdom	Halliburton, Ltd. and Halliburton Inc.
6. CHEE (injured)	Singapore	McClelland, S.A. and McClelland Engineering, Inc.
7. GRUNKE (injured)	Australia	Brinkerhoff
8. ALBUQUERKE (injured)	Singapore	P.T. Calearine and Oceaneering
9. JONES (injured)	United Kingdom	Geophysical Services
10 LOWRY (injured)	Canadian	Brinkerhoff
11 COLE (injured)	New Zealand	Brinkerhoff
12 ACTON (injured)	United States	Brinkerhoff

ME	CORP. NATIONALITY OF EMPLOYER	HOME OFFICE OF EMPLOYER
CRAIG (deceased)	United States	San Francisco, Calif
OWEN (deceased)	United States	San Francisco, Calif
SHERRILL (deceased)	United States	San Francisco, Calif
KAUFMAN (deceased)	United States	Los Angeles, Calif
ZIPFEL (deceased)	United Kingdom and United States	London and Dallas Tx
CHEE (injured)	Panama and United States	Houston, TX
GRUNKE (injured)	United States	San Francisco, Calif
ALBUQUERKE (injured)	Indonesia and United States	Indonesia and United States
JONES (injured)	United States	Dallas, Tx
LOWRY (injured)	United States	San Francisco, Calif
COLE (injured)	United States	San Francisco, Calif
ACTON (injured)	United States	San Francisco, Calif

APPENDIX I

Convention between the United States of America and other members of the International Labor Organization respecting shipowners' liability in case of sickness, injury, or death of seamen. Adopted by the General Conference of the International Labor Organization, twenty-first session, Geneva, October 24, 1936; ratification advised by the Senate of the United States, subject to understandings, June 13, 1938, ratified by the President of the United States, subject to the said understandings, August 15, 1938; ratification of the United States of America registered with the Secretary-General of the League of Nations October 29, 1938; proclaimed by the President of the United States September 29, 1939.

By the President of
the United States of America

A PROCLAMATION

WHEREAS a draft convention (No. 55) with regard to the liability of the snipowner in case of sickness, injury, or death of seamen, was adopted on the twenty-fourth day of October nineteen hundred and thirty-six, by the General Conference of the International Labor Organization at its twenty-first session

held at Geneva October 6-24, 1936, a certified copy of which draft convention, communicated by the Secretary-General of the League of Nations, acting in conformity with the requirements in the nineteenth Article of the Constitution of the International Labor Organization, to the Government of the United States of America as a Member of the said Organization, is, in the ... English language[], word for work as follows:

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Twenty-first Session on 6 October 1936, and

Having decided upon the adoption of certain proposals with regard to the liability of the shipowner in case of sickness, injury or death of seamen, which is included in the second item on the Agenda of the Session, and

Having determined that these proposals shall take the form of a Draft International Convention, adopts, this twenty-fourth day of October of the year one thousand nine hundred and thirty-six, the following Draft Convention which may be cited as the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936:

Article 1.

1. This Convention applies to all persons employed on board any vessel, other than a ship of war, registered in a territory for which this Convention is in force and ordinarily engaged in maritime navigation.

2. Provided that any Member of the International Labour Organization may in its national laws or regulations make such exceptionns as it deems necessary in respect of --

(a) persons employed on board,

(i) vessels of public authorities when such vessles are not engaged in

trade;

(ii) coastwise fishing boats;

(iii) boats of less than twenty-five tons gross tonnage;

(iv) wooden ships of primitive build such as dhows and junks;

(b) persons employed on board by an employer other than the shipowner;

(c) persons employed solely in ports in repairing, cleaning, loading or unloading vessels;

(d) members of the shipowner's family;

(e) pilots.

Article 2.

1. The shipowner shall be liable in respect of --

(a) sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement;

(b) death resulting from such sickness or injury.

2. Provided that national laws or

regulations may make exceptions in respect of:

(a) injury incurred otherwise than in the service of the ship;

(b) injury or sickness due to the wilful act, default or misbehaviour of the sick, injured or deceased person;

(c) sickness or infirmity intentionally concealed when the engagement is entered into.

3. National laws or regulations may provide that the shipowner shalnot be liable in respect of sickness, or death directly attributable to sickness, if at the time of the engagement the person employed refused to be medically examined.

* * * * *

Article 5.

1. Where the sickness or injury results in incapacity for work the shipowner shall be liable --

(a) to pay full wages as long as the sick or injured person remains on board;

(b) if the sick or injured person has dependants, to pay wages in whole or in part as proscribed by national laws or regulations fom the time when he is landed until he has been cured or the sickness or incapacity has been declared of a permanent character.

2. Provided that national laws or regulations may limit the liability of the shipowner to pay wages in whole or in part in respect of a person no longer on board to a period which shall not be less than sixteen weeks from the day of the injury or the commmencement of the sickness.

3. Provided also that, if there is in force in the territory in which the vessel is registered a scheme applying to seamen of compulsory sickness insurance, compulsory accident insurance or workmen's compensation for accidents, national laws or regulations may provide:

(a) that a shipowner shall cease to be liable in respect of a sick or injured

person from the time at which that person becomes entitled to cash benefits under the insurance or compensation scheme;

(b) that the shipowner shall cease to be liable from the time prescribed b law for the grant of cash benefits under the insurance or compensation scheme to the beneficiaries of such scheme, even when the sick or injured person is not covered by the scheme in question, unless he is excluded fromthe scheme by reason of any restriction which affectsd particularly foreign workders or workers not resident in the territory in which the vessel is registered.

* * * * *

Article 9.

National laws or regulations shall make provision for securing the rapid and inexpensive settlement of disputes concerning the liability of the shipowner under this Convention.

* * * * *

Article 11.

This Convention and national laws or regulations relating to benefits under this Convention shall be so intepreted and enforced as to ensure equality of treatment to all seamen irrespective of nationality, domicile or race.

Article 12.

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organization, each Member of the Organization which ratifies this Convention shall append to its ratification a declaration stating:

(a) the territories in respect of which it undertakes to apply the provisions of the Convention witout modification;

(b) the territories in respect of which it undertakes to apply the provisions of the Convention subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision.

2. The undertkings referred to in sub-paragraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of sub-paragraphs (b), (c) or (d) of paragraph 1 of this Article.

Article 14.

The formal ratifications of this Convention shall be communicated to the Secretary-General of the League of Nations for registration.

Article 15.

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Secretary-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Secretary-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on wich its ratification has been registered.

Article 16.

As soon as the ratifications of two Members of the International Labour Organization have been registered, the Secretary-General of the League of Nations shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be

communicated subsequently by other Members of the Organisation.

Article 17.

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Secretary-General of the League of Nations for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be found for another period of ten years and, thereafter, may denounce this Convention at the expiration of each perod of ten years under the terms provided for

in this Article.

* * * * *

Article 20.

The ... English text[] of this Convention shall ... be authentic.

AND WHEREAS it is provided in Article 14 of the said draft convention that the formal ratifications thereof shall be communicated to the Secretary-General of the League of Nations for registration and in Article 15 that the convention shall come into force twelve months after the date on which the ratifications of two Members of the International Labor Organization have been registered with the Secretary-General of the League of Nations and that thereafter the convention shall come into force for any Member twelve months after the date on which its ratification has been registered;

AND WHEREAS the said draft convention was duly ratified on the part of the United States of America subject to

understandings as follows:

"That the United States Government understands and construes the words 'vessels registered in a territory' appearing in this convention to include all vessels of the United States as defined under the laws of the United States.

"That the United States Government understands and construes the words 'maritime navigation' appearing in this Convention to mean navigation on the high seas only.

"That the provisions of this convention shall aply to all territory over which the United States exercises jurisdiction except the Government of the Commonwealth of the Philippine Islands and the Panama Canal Zone, with respect to which this Government reserves its decision."

AND WHEREAS the ratification of the said draft convention by Belgium was registered with the Secretary-General of

the League of Nations on April 11, 1938, subject to subsequent decisions regarding application to the Belgian Congo and the territories under Belgian Mandate and the ratification thereof by the United States of America, subject to the understandings above recited, was registered with the Secretary-General on October 29, 1938;

AND WHEREAS by such registrations the said draft convention became a formal convention between the United States of America and Belgium on October 29, 1938, which, pursuant to Article 15 thereof, will come into force as between the United States of America and Belgium on October 29, 1939, twelve months after the date on which the ratification of the United States of America was registered with the Secretary-General of the League of Nations, and pursuant to the same Article, will come into force, for other Members of the International Labor Organization whose ratifications may have been or hereafter

may be registered with the Secretary-General of the League of Nations subsequent to October 29, 1938, twelve months after the date on which the ratification has been or may be registered in each case;

NOW, THEREFORE, be it known that I, Franklin D. Roosevelt, President of the United States of America, have caused the said convention to be made public to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the United States of America and the citizens thereof, on and from October 29, 1939, subject to the understandings above recited and to any exceptions and any limitations of liability in accordance with the provisions of the convention which may be made by legislation or regulations on the part of the United States of America.

IN TESTIMONY WHEREOF I have hereunto

set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-ninth day of September in the year of our Lord one thousand nine hundred and thirty-nine and of the Independence of the United States of America the one hundred and sixty fourth.

FRANKLIN D. ROOSEVELT

By the President:

CORDELL HULL

Secretary of State:

Title 46 United States Code, Section 688: Recovery for injury to or death of seaman. (a) Application of railway employee statutes: jurisdiction

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the Unied States conferring or regulating the right of actio for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be

under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) Limitation for certain aliens; appliability in lieu of other remedy.

(1) No action may be maintained under subsection(a) of this sectionor under any other maritime law of the United States for maintenance and cure for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action if the incident occurred --

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of off-shore mineral or energy resources - including but not limited to drilling, mapping, surveying, diving, pipe-laying, maintaining, repairing, constructing, or transporting supplies, equipment or

personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, it territories, or possessions. As used in this paragraph, the term "continental shelf" has the meaning stated in article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person --

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occured; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy

is sought maintained citizenship or residency.

(As amended Dec. 29, 1982, Pub.L. 97-389, title V, Sec. 503(a), 96 Stat. 1955).